

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 97-0199 RO

Withholding Tax

Responsible Officer Liability

For Tax Period: July/92-December/95

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Responsible Officer Liability Withholding Tax

Authority: IC 6-2.5-9-3; IC 6-8.1-5-1

Taxpayer protests the imposition of responsible officer liability on withholding taxes.

STATEMENT OF FACTS

Taxpayer was assessed as a responsible officer for withholding tax liabilities not paid by Company C. The Department made the assessments based on the best information available. Taxpayer was assessed because he was listed as the Secretary/Treasurer of Company C on the company's Business Tax Application (BT-1), dated March 19, 1990. Taxpayer was also listed as the Secretary/Officer of Company C on the company's Report of Indiana Domestic Corporation for filing year 1993. Taxpayer protested these responsible officer assessments. Taxpayer subsequently refused to attend an administrative hearing and was informed this Letter of Findings would be written pursuant to the best information available to the Department. Additional facts will be provided below, as necessary.



I. Responsible Officer Liability Withholding Tax

DISCUSSION

Indiana Code section 6-2.5-9-3 states:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
 - (2) has a duty to remit state gross retail or use taxes (as described in IC 6-2.5-3-2) to the department;
- holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state. If the individual knowingly fails to collect or remit those taxes to the state, he commits a Class D felony.

Pursuant to Indiana Code section 6-8.1-5-1(b),  The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made... 

Taxpayer claims he was not a responsible officer of Company C for the assessment period. Taxpayer also claims the company was not operating, and therefore, not accruing withholding tax obligations, beyond the Spring of 1992. Taxpayer has failed to provide evidence supporting his contentions.

Taxpayer did provide a Resolution Letter issued by the Department regarding a liability assessed against Company C. However, the Resolution Letter in no way addresses the assessments made against the taxpayer who has separate liabilities. Taxpayer also provided a copy of an order, signed by the Hamilton Circuit Court, which dismisses without prejudice the Department's suit against Company C. Again, this evidence pertains to the Company and not to the taxpayer's personal liability.

FINDING

Taxpayer's protest is denied. Taxpayer has failed to provide evidence to establish he was not the responsible officer during the assessment periods. Alternatively, taxpayer has failed to prove Company C was not in operation during the assessment periods and, therefore, not accruing withholding tax obligations.